IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MRS. JUSTICE K.HEMA

THURSDAY, THE 6TH SEPTEMBER 2007 / 15TH BHADRA 1929

CRL.A.No. 2037 of 2004(D)

SC.107/2001 of ADDL. DISTRICT AND SESSIONS, COURT, MANJERI.
CP.23/1999 of JUDL. MAGISTRATE OF FIRST CLASS COURT, PARAPPANANGADI.
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APPELLANT:

KANNAN, S/O.SUBRAMANIAN,
CONVICT NO.1258, CENTRAL PRISON,
KANNUR.

BY ADV. SRI.DEEPU THANKAN

RESPONDENTS:

STATE OF KERALA.

BY PUBLIC PROSECUTOR SRI.NOBLE MATHEW

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 06/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.KOSHY & K.HEMA, JJ.

Crl.A.No.2037 OF 2004

Dated 6th September, 2007

JUDGMENT

Koshy,J.

Appellant/accused was alleged to have murdered his mother in order to rob Rs.340/= possessed by her in a small pouch at about 1 p.m. on 31.5.1998 in room No.C-16 of the 3rd floor of Kondanath lodge at Thirurangadi by beating her head with bottle and inflicting injuries on her neck with a spade warranting conviction under Sections 302 and 397 of the Indian Penal Code. Apart from him, police registered case against accused No.2 Ramamurthy also. He absconded and hence his case was split up. Only the appellant faced trial. There was no eye witness to the incident. Ext.P1 is the F.I.R. which was registered by PW1 Sub Inspector. According to him, the accused himself came and informed the death on 1.6.98 at 8 a.m. F.I.R. was accordingly registered on 1.6.98 and it reached Sub Divisional Magistrate's Court, Thirur along with inquest report etc. subsequently. The alleged cause of death mentioned in the above report was excessive drinking and nobody was suspected as per the F.I.R. PW1 denied the suggestion put to him that the accused along with Ramamurthy etc. were taken into custody in the same night. PW2 was also staying in the same lodge in room No.C-16. According to him, he and his wife were living in that room and deceased, A1 and their

family are residing in the adjacent room. He and his wife went to the nearby place for work and by 9 O' clock in the evening when they came back, they found that their locked room was broken up. When they went inside and lighted the lamp, they saw the dead body and hearing the cry of his wife people around there came. He found MO1 spade, a bucket, a plate of parotta, an empty liquor bottle etc. scattered in the room. He was also a mahazar witness. But, he denied his signature in the mahazar and he was declared hostile. In any event, his evidence will not connect the accused with the crime. He also stated that police station is within half kilometre from the place of incident. PW3, another mahazar witness, had admitted his signature in the mahazar, but, having denied in seeing the incident, stated that he was not present at the time of taking mahazar. He was an Electrician conducting a shop in the same building. In any event, he stated that he has only hearsay information about the incident and it will not connect the accused with the crime.

2. PW4 is the sister of the accused. She is the daughter of the deceased. She is living along with her husband. She deposed that the deceased was staying with the accused and his family in room No.C-14. and their father divorced the mother. Later, mother married one Dandavan. Thereafter, Dandavan was living with

another woman. Mother and accused were doing the work of filtering of gold and mother used to take liquor also. She further stated that mother was very affectionate to A1. She was declared hostile. No part of her evidence will connect the accused with the crime.

3. PW10 is also residing in the same lodge. He was also declared hostile and his evidence also will not connect the accused with the crime. PW11 is the owner of the lodge. He deposed that he came to know about the incident in the night itself. He also deposed that the accused came and showed a cinema ticket and stated that he went for cinema, that he came to know about the incident only after cinema and he was seen very sad. PW11 was also declared hostile and no part of his evidence will connect the accused with the crime. PW14 is Dandavan who earlier lived with the deceased as husband. He stated that with the consent of the deceased he was living with another woman in the nearby room in the same lodge. Hearing about the incident he also came there. He also stated that the accused and Murthy etc. were taken to the police station in the same night. He further stated that Murthy, the absconding accused, was injured. PW4 and PW14 also stated that when the police arrived, they asked the accused to cover up the dead body with cloth and accused did the same and dress of the accused was stained with blood in that

process. He went to his room and changed the same in the bathroom and accompanied the dead body.

4. PW16 is the Investigating Officer. He deposed that the dress was fount out on the disclosure statement of the accused from the bathroom of room No.14. He also proved the scene mahazar and other recovery items. To the question put to him whether accused was taken into custody on the same day itself, he stated that he started investigation only on the next day morning and he did not take the accused into custody. He also stated that hairs from Murthy and accused were taken and sent for forensic examination for comparing the hairs found in the hands of the deceased. It is also stated by him that the blouse of the deceased was torn. Ext.P20 shows that the hairs found in the hands of the deceased and the sample hairs of the accused are dis-similar in all observed characteristics. Therefore, the only evidence connecting the accused with the crime is the fact that the dress recovered from him was blood stained for which he has given reasonable explanation. According to the accused, he and his mother went for work. Since the mother wanted a bottle of liquor, that was given to her. Thereafter, he went to see cinema and by the time he returned after seeing cinema at 9.30 p.m. he saw dead body of his mother in room No.16. Others were also there. It is the

definite case that he was taken into custody on that day itself along with Dandavan and Murthy. From the remand report it seems that originally Murthy alone was made as the accused and later appellant was also made as the first accused. But, the description and allegations in the charge sheet show that single accused has done the crime. The case diary also shows that there is manipulation. We are concerned with the evidence adduced before the court. The evidence adduced before the court will show that the accused is not guilty. Why his dress was stained with blood was explained by him and he has given a probable explanation. As directed by the police, he himself covered up the body and he removed his stained cloths in his room. This is supported by the evidence of PWs4 and 14. The incident occurred within half kilometre from the police station. The building in which the incident occurred is a four storied building in which several people were living and all the persons by 9 p.m. knew about the death on 31.5.98 itself. It is very difficult to believe that police was not aware about the incident on 31.5.98 and the fact that the accused being the son and persons suspected were not taken into custody as suggested by the appellant and other prosecution witnesses are more probable. In any event, the position of the blouse, inquest report etc. would show that there was an attempt to molest the deceased. In any event, to find the accused guilty by the

substantial evidence, all links of the chain of circumstances should be proved. Merely because dress of the accused contained human blood which was explained by the accused, it cannot be stated that he was guilty especially when the dead body was not found in the house where they were living and there is no evidence who brought the dead body to room No.16 where the dead body was found. There was also no evidence to show that the deceased was in possession of Rs.340/= and that was kept in a small pouch. The prosecution failed to prove that the accused is guilty and accused alone is guilty. In the absence of direct evidence, for convicting an accused on the basis of circumstantial evidence, it should be presumed leaving no doubt that only conclusion possible from circumstances proved is that accused alone is guilty and nobody else is guilty. Mere suspicious circumstances alone is not enough to convict a person guilty of murder. It is true that commission of offence can be proved by circumstantial evidence. But it was held by the Apex Court in **Balwinder Singh v. State of Punjab (AIR 1996 SC 607)** that in a case based on circumstantial evidence, the court has to be on its guard to avoid the danger of being swayed by emotional considerations. For convicting the accused generally on the basis of circumstantial evidence, court should be satisfied that all the links in the chain are complete and the only hypothesis possible on the basis

of the evidence adduced is that accused and the accused alone is guilty of the offence. (**See C.K.Raveendran v. State of Kerala (JT 1999 (9) SC 408)** and **Jaswant Singh v. State (Delhi Admn) (AIR 1979 SC 190)**. Circumstantial evidence should not only be consistent with the guilt of the accused but should also be inconsistent with his innocence as held by the Apex Court in **Mangaleshwari v. State of Bihar (AIR 1954 SC 715).** It has been repeatedly held by the Supreme Court that the distinction between 'may be true' and 'must be true' is long and divides vague conjectures from sure consideration and each link must be established by clear and unobjecting circumstances. In **State of Kerala v. Ramachandran (1999 (3) KLT 512)**, Chief Justice Arijit Pasayat (as he then was) observed for the Bench as follows:

> It is settled principle of law that the circumstances relied upon by the prosecution must be fully established, and the chain of evidence furnished by those circumstances should be fully complete so as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused. In a case of circumstantial evidence not only various links of evidence should clearly establish guilt of the accused, but also it must be such as to rule out a reasonable likelihood of the innocence of the accused."

The Apex Court in **Sharad v. State of Maharashtra (AIR 1984 SC 1622)** prescribed five principles for convicting an accused on the

basis of circumstantial evidence which are as follows:

> “ 1. the circumstances from which the conclusion of guilt is to be drawn should be fully established, as distinguished from 'may be' established.
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> 2. the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty;
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> 3. the circumstances should be of a conclusive nature.
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> 4. they should exclude every possible hypothesis except the one to be proved; and
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> 5. there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

It is well settled principle that unlike direct evidence, indirect circumstances which throw light, should lead from suspicion to

certitude and care must be taken to avoid subjective pitfalls of exaggerating a conjecture into a conviction. In this case, such consistent conclusive circumstances are absent. Since the prosecution failed to prove successfully the charges levelled against the accused, we are of the opinion that he is entitled to an acquittal. In any event, accused is entitled to the benefit of reasonable doubt.

5. In the result, conviction and sentence of the appellant under Sections 302 and 397 of the Indian Penal Code are set aside and appellant is acquitted. He should be set free forthwith if he is not required in any other case.

The appeal is allowed.

J.B.KOSHY
JUDGE

K.HEMA
JUDGE

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